

# Consultation on draft National Principles to Address Coercive Control

We welcome the opportunity to provide feedback as part of the consultation on the draft National Principles to Address Coercive Control (the **National Principles**). This is an important area of reform for the community legal sector in Victoria. Community Legal Centres (CLCs) have considerable experience and expertise assisting victim survivors of family violence, particularly through the court process. We commend the work that has gone into developing the draft National Principles and have made some suggestions to further strengthen them.

## About the Federation of Community Legal Centres

The Federation of Community Legal Centres is the peak body for Victoria's 46 CLCs. Our members are at the forefront of helping those facing economic, cultural or social disadvantage and whose life circumstances are severely affected by their legal problem.

For 50 years CLCs have been part of a powerful movement for social change, reshaping how people access justice, creating stronger more equitable laws, and more accountable government and democracy. We want a community that is fair, inclusive and thriving: where every person belongs and can learn, grow, heal, participate and be heard.

The CLC sector plays an important role in providing legal advice and representation to people experiencing, or at risk of, family violence. CLCs work with local partners and communities to support children and families who are experiencing disadvantage and family violence. CLCs deliver a range of innovative programs, including early intervention initiatives and justice partnerships with the community, health and social sectors.

## Purpose and structure of the principles

### Delineation of roles and responsibilities

We understand that a key purpose of the National Principles is to create a shared national understanding of coercive control which requires input at all levels, including the community, support service sector, police, justice system and government. While we support this holistic focus and understand that the National Principles are intended to be high level, the National Principles could more clearly articulate and delineate the different roles and responsibilities at these various levels. The National Principles recognise that there needs to be widespread community-awareness raising, education and training about coercive control. There are additional levels of accountability for some sectors. For example, the police, courts, tribunals, and the justice system play a key role in embedding a consistent and nuanced understanding of coercive control within risk assessment frameworks, screening tools, policies, and practice guides.<sup>1</sup> Services that support victim survivors require capacity building for identification of coercive control and effective responses within the context of their professional framework.

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<sup>1</sup> See Domestic Violence Victoria and Domestic Violence Resource Centre (2021). *Responding to Coercive Control in Victoria – Broadening the conversation beyond criminalisation*. p.22, available at: [https://safeandequal.org.au/wp-content/uploads/PAP\\_202105\\_Responding-to-Coercive-Control\\_FINAL.pdf](https://safeandequal.org.au/wp-content/uploads/PAP_202105_Responding-to-Coercive-Control_FINAL.pdf) (the **Safe and Equal Policy Paper**)

The National Principles make limited references to the role of health services in identifying and responding to coercive control. We suggest that there is greater recognition of the role of health services given that they are often a trusted source of support for people experiencing family violence.<sup>2</sup>

### Resourcing services to support victim survivors

We support the National Principles' focus on training, educating and upskilling services in understanding coercive control and responding effectively. Working with victim survivors to support them to understand what they have been experiencing and unpacking a pattern of abuse, often spanning several years, in a trauma-informed way requires significant time and skill. The National Principles should acknowledge the need for adequate resourcing for services that support victim survivors to effectively embed a shared understanding of coercive control into practice.

### Structure and examples

To increase readability, the summary and in-depth sections could be amalgamated to lessen repetition and make the document more concise. The National Principles could potentially also include some short quotes or examples from victim survivors to illustrate the impact of coercive control on their lives, as well as victim survivors' experiences of inequality and discrimination in the family violence context.

## Framing of coercive control and its impacts

### Defining coercive control

National Principle 1 refers to coercive control often being a significant part of a person's experience of family violence. Coercive control is a defining feature of family violence and this could be more clearly articulated in National Principle 1. For example, National Principle 1 could set out that while the pattern of conduct used by perpetrators and the context for each victim survivor is distinct, coercive control is common to most experiences of family violence.<sup>3</sup> The Principles could also more clearly articulate that the forms of coercive control can be subtle and nuanced and that it is important to consider the totality of a victim survivors experience.<sup>4</sup> We suggest that this section considers coercive control in the context of elder abuse to take into the account the unique dynamics and drivers of this form of family violence.

The in-depth section under National Principle 1 provides a list of various forms of abuse which is useful in illustrating different ways that coercive control can manifest. We suggest that it is acknowledged more clearly that this is not an exhaustive list and that there are various forms of coercive control which are unique to each relationship and context.<sup>5</sup>

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<sup>2</sup> Health Justice Australia (2021). *Health justice partnership as a response to domestic and family violence*. p.4, available at: <https://healthjustice.org.au/?wpdmdl=3935>

<sup>3</sup> Safe and Equal Policy Paper, p.5.

<sup>4</sup> Ibid, p.8.

<sup>5</sup> Victorian Aboriginal Legal Service (2022). *Addressing Coercive Control Without Criminalisation: Avoiding Blunt Tools that Fail Victim-Survivors*, p.31, available at: <https://www.vals.org.au/wp-content/uploads/2022/01/Addressing-Coercive-Control-Without-Criminalisation-Avoiding-Blunt-Tools-that-Fail-Victim-Survivors.pdf> (VALS Policy Paper)

We have set out the following specific suggestions in relation to the list of different forms of abuse:

- Spiritual and religious abuse should be separated out from emotional or psychological abuse as this is distinct.
- Lateral violence should be described more clearly.
- There should be a reference to perpetrators using threats of self-harm or suicide against victim survivors as this can be a pervasive form of coercive control.

### Greater focus on mental health and systems abuse

The National Principles refer to systems abuse by perpetrators in a number of sections, including under National Principle 1. We suggest that the National Principles acknowledge the use of systems abuse in the health context which can involve perpetrators misusing the mental health system to silence and control victim survivors. For example, perpetrators manipulating victim survivors into believing they are mentally unwell or raising false claims with health professionals about the victim survivor's mental health resulting in loss of personal agency.

The section on discrimination and inequality refers to a range of intersecting factors that can increase barriers and make family violence more frequent and severe for victim survivors, but there are limited references to mental health. For example, National Principle 4 provides that perpetrators may rely on discriminatory community attitudes against victim survivors with disability to discredit them or claim that they will not be believed or may risk being institutionalised. This should extend to people experiencing mental health issues. It is important that in combatting systems abuse, the National Principles highlight the need for services, including health services, to minimise collusion with perpetrators.

### Impacts of coercive control

While the National Principles cover a range of impacts of coercive control, stronger language could be used to describe the pervasive and long-lasting effects of coercive control on victim survivors. For example, Safe and Equal in a policy paper has described coercive control tactics as instilling fear in a victim survivor, eroding their sense of identity and autonomy and entrapping them in a violent relationship by preventing all options for accessing safety and support.<sup>6</sup> National Principle 2 acknowledges that perpetrators may isolate victim survivors from family and friends which could also extend to isolation from support agencies and health supports.

### Shifting responsibility to perpetrators

While the draft National Principles highlight perpetrator accountability in some sections, this could be strengthened throughout the document to ensure that the language used shifts responsibility from victim survivors to perpetrators and service responses. For example, National Principle 7 provides that “the effects of discrimination and inequality, recognising that *some people have an increased risk of coercive control* being used against them by a perpetrator.”<sup>7</sup> This should be reframed to make it clear that the perpetrator targets victim

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<sup>6</sup> Safe and Equal Policy Paper, p.8.

<sup>7</sup> Consultation Draft – National Principles to Address Coercive Control, p.24.

survivors who may experience discrimination and inequality and uses this against them as part of the abuse, rather than unintentionally implying that the victim survivor invites abuse due to their background or characteristic.

## Criminalisation of coercive control

### Key considerations for criminalisation

We appreciate that the National Principles do not provide a firm position on criminalisation of coercive control given the varied positions and differing legal landscape in each jurisdiction. We are concerned about the implications of criminalising coercive control in the Victorian context, in particular for victim survivors who experience multiple, intersecting forms of structural disadvantage.<sup>8</sup> It is imperative that any new offence does not further marginalise women who are at risk and contribute to the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system. While these concerns are reflected in the National Principles, it is important that these are emphasised as key considerations for governments when determining whether to criminalise coercive control.

National Principle 7 recognises the importance of using victim survivors lived experience to inform the development, implementation, and evaluation of any coercive control offence. We suggest this is strengthened by emphasising the importance of extensive consultation with victim survivors, the family violence sector and legal services where any state or territory government is considering criminalising coercive control. In line with National Principle 5, this must involve consultation with a wide range of victim survivors to fully explore how the creation of a coercive control offence will impact on diverse communities.<sup>9</sup> Scotland's *Domestic Abuse Act 2018* was developed after significant consultation with stakeholders and was co-designed with victim survivors, including a coalition of children's and women's charities.<sup>10</sup>

Currently, there is not a strong evidence base which demonstrates the effectiveness of criminalisation in those jurisdictions which have introduced new offences.<sup>11</sup> While there is a reference to the need for monitoring and evaluation under National Principle 7, this could be strengthened. There could be more emphasis placed on the need to build the evidence base on the effectiveness of criminalisation and other responses to coercive control. This will involve monitoring the implementation of coercive control offences in other jurisdictions and any unintended implications.<sup>12</sup>

While National Principle 7 acknowledges the lack of understanding of coercive control across the spectrum and the need for education and training initiatives to ensure laws are implemented effectively, this point should be strengthened. National Principle 7 should articulate the need for cultural and attitudinal change across the police and justice system,

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<sup>8</sup> Australia's National Research Organisation for Women's Safety. (2021). *Defining and responding to coercive control: Policy brief* (ANROWS Insights, 01/2021). ANROWS, p.7. **(ANROWS Policy Brief)**

<sup>9</sup> Safe and Equal Policy Brief, p.21; Australian Women Against Violence Alliance (2021). *Criminalisation of Coercive Control – Issues Paper*, p.14, available at: <https://awava.org.au/2021/01/28/research-and-reports/criminalisation-of-coercive-control-issues-paper>.

<sup>10</sup> ANROWS Policy Brief, p.6.

<sup>11</sup> Ibid, p.9; Women's Legal Service Victoria. (2020). *Policy Brief: Justice system response to coercive control*. p.3, available at: [https://www.womenslegal.org.au/~womensle/wp-content/uploads/2021/04/CoerciveControl\\_policy\\_brief.pdf](https://www.womenslegal.org.au/~womensle/wp-content/uploads/2021/04/CoerciveControl_policy_brief.pdf) **(WLSV Policy Brief)**

<sup>12</sup> ANROWS Policy Brief, p.9

alongside embedding best practice and family violence expertise within these systems. This recognises that laws are only as effective as those who apply, prosecute and enforce them.<sup>13</sup>

### Unintended consequences

We strongly support the recognition in National Principle 8 of the increased risk of misidentification of victim survivors as perpetrators as an unintended consequence of criminalisation of coercive control. The section on misidentification could acknowledge the impact of systemic racism in policing practices which leads to a higher risk of misidentification for certain groups of women, in particular Aboriginal women, and the importance of reforming police practices to prevent and rectify misidentification by police. This could be further strengthened by acknowledging the need for robust and independent police accountability mechanisms.<sup>14</sup>

While National Principle 8 makes references to the challenges of prosecuting a coercive control offence and the risk of re-traumatisation for victim survivors, this could be expanded on in this section. This section could highlight in more detail the difficulties prosecuting this type of offence given the high evidentiary threshold, as well as the disempowering nature of the legal process for victim survivors. Exacting court processes, including cross-examination, can leave victim survivors feeling dismissed and blamed which can be traumatic and harmful.<sup>15</sup> The National Principles should recognise the need for more support for victim survivors who are involved in the legal process which requires additional resourcing.

We suggest that National Principle 8 includes the following additional unintended consequences:

- Criminalisation may deter victim survivors from seeking help or making reports to police. For example, where they do not wish for their partner or family member to be charged or for fear of repercussions.<sup>16</sup> This is particularly problematic for communities who are over-policed and have a well-founded mistrust of authorities, in particular for Aboriginal and Torres Strait Islander communities.<sup>17</sup>
- The increased risk of the police and justice system neglecting what victim survivors want and not respecting their judgement about their own safety. For example, victim survivors may contact police with a desire for the violence to end, but do not necessarily want their abusive partner or family member arrested.<sup>18</sup>
- The increased risk of perpetrators using the offence against victim survivors leading to systems abuse and exploitation of the legal process particularly given the complex nature of coercive control.<sup>19</sup>

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<sup>13</sup> Ibid, p.4.

<sup>14</sup> VALS Policy Paper, p.33

<sup>15</sup> Ibid.

<sup>16</sup> WSLV Policy Brief, p.11.

<sup>17</sup> Safe and Equal Policy Paper, p.16; VALS Policy Paper, p.8.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid; ANROWS Policy Brief, p.7.

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